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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 2, 1993

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street Northwest
Washington, D.C. 20554

Re: Petition for Rulemaking to Determine the Terms and Conditions Under Which Tier 1 LECs Should be Permitted to Provide InterLATA Telecommunications Services, RM - 8303.

Dear Mr. Caton:

Please find attached an original and four copies of the Comments of CENTEX Telemanagement, Inc. in the above mentioned Rulemaking. Also attached is an additional copy which we ask that you file stamp to signify receipt and return to the messenger for delivery to the undersigned. Please contact Mr. Steve Gorosh at (415) 512-5290 if you have any questions.

Sincerely,

Mary E. Wand

Mary E. Wand
Attorney for CENTEX Telemanagement, Inc.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Petition for Rulemaking to Determine The Terms and Conditions Under Which Tier 1 LECs Should be Permitted to Provide InterLATA Telecommunications Services	)) RM - 8303))

COMMENTS OF CENTEX TELEMANAGEMENT, INC.

I. Introduction

The Bell Operating Company (BOC) Petition is premised on the view that competitive entry in the local exchange and exchange access markets has eliminated BOC monopoly power and thus removed the justification for the interLATA prohibition. CENTEX Telemanagement, Inc. (CENTEX Telemanagement), a telecommunications management services company with more than 11,000 small business clients,[1] submits that the Commission must assess the extent of BOC's local bottleneck power with reference to the actual competitive alternatives available to small businesses, which comprise the largest segment of the Nation's economy.

While the local exchange bottleneck may be eroding for large corporate users, individual BOCs such as Southwestern Bell (SWB) maintain substantial and long-standing barriers limiting

[1] CENTEX Telemanagement serves the role filled by in-house telecommunications managers, actively managing all of a small business client's telecommunications needs. As a "single point of contact", CENTEX Telemanagement analyzes traffic, telecommunication configurations and costs; provides advice regarding the most efficient mix of third party vendor services and equipment to satisfy client needs; manages and coordinates the vendors which provide local, long distance, international, "800", voice mail, travel card, conference calling, and database gateway access services; and provides 24-hour emergency assistance to respond to a variety of client needs and requests.

competitive alternatives for small business and residential customers. Until these barriers -- including restrictions on the sharing and resale of local services -- are eliminated, relief from the MFJ's interLATA prohibition for BOCs maintaining these restrictions would be premature. This means that the Commission should analyze the BOC requests individually, and that SWB and other BOCs which maintain restrictions on the sharing and resale of local services like Centrex service should not receive interLATA authority prior to the elimination of such restrictions.

Sharing and resale is critical for facilitating small business access to service alternatives, as it allows small businesses to achieve the economies of scale available to large users, and thus enables them to gain cost effective access to the full range of existing facilities-based competitive alternatives. The Commission eliminated sharing and resale restrictions on interstate services almost two decades ago as an essential ingredient to the constraint of dominant carrier market power and for the development of an effectively competitive environment.

Unfortunately, a variety of BOC state tariffs and business practices still preclude sharing, resale and joint use of local services. In particular, Southwestern Bell (SWB) has imposed and aggressively defended restrictions on the sharing and joint use of Centrex services in Texas, which preclude small businesses from utilizing advanced telecommunications features and services routinely available in the market to larger corporate customers. BellSouth, US West, and other BOCs maintain similar restrictions on sharing and resale in a number of states. These restrictions artificially sustain BOC bottlenecks over local exchange and access services at the same time that SWB and other BOCs claim the bottleneck is "eroding".

The Commission's longstanding policies prohibiting resale and sharing restrictions preclude a finding that the local monopoly bottleneck has dissipated for small businesses where, as in Texas, similar intrastate restrictions are vigorously enforced and defended. In establishing terms and conditions under which BOCs would be permitted to provide interLATA services, the Commission should accordingly rule that elimination of tariff restrictions on resale and sharing of local exchange and access services is a precondition for entry into the interLATA services market.

II. The Commission Must Assess The Extent of the BOC Bottleneck With Reference to Local Service Alternatives for Small Businesses

The BOC Petition argues that the Modified Final Judgment's (MFJ) interLATA ban should be removed because, in the period since divestiture, robust competition has developed in the local exchange market:

> The local exchange 'bottleneck' that so concerned Judge Greene is eroding, and with it any semblance of justification for retaining the interLATA prohibitions on the BOCs.

BOC Petition at 10. Citing statistical growth in facilities-based competitive alternatives including radio (cellular), Competitive Access Providers (CAPs), and cable television, the BOCs state that "large businesses are already benefitting from a great deal of competition in the local exchange." BOC Petition at 24.

The BOCs concede that the same competitive alternatives do not yet exist for small residential and business customers. In its only reference to small business, the BOC Petition acknowledges that small customers "remain largely dependant on the single, established local exchange carrier for telephone service." Id. Nonetheless, the BOCs insist, without explanation, that "even the residual core of the local exchange monopoly will not survive much longer." Id.

It is impossible to accurately assess the extent of local service competition without focusing on local service alternatives for small businesses. Small businesses comprise almost 98 percent of all business establishments, and employ more than half of the nation's private sector employees.[2] Small businesses, moreover, were responsible for almost 70 percent of private sector employment growth in the 1980s,[3] and are widely predicted to drive economic expansion in the 1990s. Given this predominant economic role, it defies the public interest to assess the extent of competition in the local exchange market, as the BOCs propose, solely with reference to the relatively small number of the Nation's largest corporations which, by virtue of their size, command unique access to competitive opportunities for local exchange access services. The Commission should instead review the existence of competitive alternatives for all customers, including smaller business users, in determining whether the local monopolies of individual BOCs justify changes to the MFJ's interLATA ban.

III. Sharing and Resale Restrictions Protect the Local Exchange Bottleneck and Harm Small Businesses

It is undisputed that, even today, many of the competitive alternatives routinely available to larger businesses -- including private and virtual networks and service from multiple local exchange and interexchange carriers -- are unavailable to small businesses, which individually lack the telecommunications expertise and necessary volumes of usage to justify the start-up or ongoing costs of these sophisticated telecommunications options. As the 1987 Huber Report

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[2] U.S. Department of Commerce, Bureau of the Census, "County Business Patterns 1988", issued December 1990. The Bureau defines small businesses as establishments with less than 100 employees.

[3] Id.

concluded, "[s]erious competition to serve smaller users has not yet arrived."[4] Little, if anything has changed since the Huber Report. Thus, a key to small business access to competitive alternatives is the ability to band together with other small businesses to produce the economies of scale available to large businesses.

The Commission recognized this fact more than a decade ago, in eliminating restrictions on the sharing and resale of interstate telecommunications services, first for private line services,[5] and later for all switched services.[6] The Commission found that sharing and resale would increase the variety of available communications services, expand the total market for specialized telecommunications services, and increase the utilization of existing telecommunications services.[7] Concluding that the "major purpose" of sharing and resale restrictions was to "enforce price discrimination", the Commission found that resale and sharing are necessary to constrain dominant carrier market power and deter cross-subsidization of competitive services.[8]

More recently, the Commission has eliminated use restrictions based on similar, procompetitive justifications. For example, in prohibiting use restrictions in tariffs for interstate

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[4] P. Huber, The Geodesic Network: 1987 Report on Competition in the Telephone Industry, Section 2.12 (1987).

[5] Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, 60 FCC 2d 261 (1976) ("Private Line Sharing Order"), aff'd on recon., Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, 62 FCC 2d 588 (1977) ("Private Line Reconsideration Order"), aff'd AT&T v. FCC, 572 F.2d 17 (2nd Cir. 1978), cert. denied, 439 U.S. 875 (1978).

[6] Regulatory Policies Concerning Resale and Shared Use of Common Carrier Public Switched Network Services, 83 FCC 2d 167 (1980) ("Switched Access Order").

[7] AT&T v. FCC, 572 F.2d at 23, n. 39.

[8] Switched access Order, 83 FCC 2d at 173, 175.

Open Network Architecture Services, the Commission held that "there is a strong federal policy against customer or user restrictions in tariffs," and that "such restrictions have often been used by carriers as a means of engaging in certain practices, such as cross-subsidization, price discrimination, and market segmentation . . . generally tend[ing] to impair competition and reduce customer welfare."[9]

In sum, the Commission's longstanding policies clearly establish that sharing, resale and use restrictions are flatly inconsistent with an effectively competitive telecommunications marketplace. Where such restrictions exist, there is thus no basis to find that BOC local monopoly power has eroded. Unfortunately, these sorts of competitive barriers are still "regrettably common."[10] It is unreasonable to conclude that competition has fully arrived to local exchanges where the LEC franchise is protected by restrictions on the sharing or resale of local services.[11]

IV. Southwestern Bell, and other BOCs, Enforce and Aggressively Defend Sharing and Resale Restrictions on Local Services

BOC tariff restrictions on the sharing and resale of local services remain common. Although CENTEX Telemanagement has not undertaken a comprehensive review of all intrastate restrictions, it has substantial experience with some states, in particular Texas, where sharing

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[9] Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry); and Policy and Rules Concerning Rates for Phase I Competitive Common Carrier Services and Facilities Authorizations Thereof, *Memorandum Opinion and Order on Further Reconsideration*, 3 FCC Rcd 1135, ¶ 64 (released Feb. 18, 1988).

[10] See Huber Report, Section 2.25.

[11] Id.

and resale restrictions artificially sustain the local bottleneck, as well as limiting telecommunications alternatives for small businesses.

The Texas situation is illustrative of the effect of sharing, resale and use restrictions on small business subscribers. In Texas, SWB bars small businesses (1) on non-continuous property from sharing advanced Centrex; and (2) with fewer than 30 lines per premises from subscribing to advanced Centrex service. As a result of these restrictions, small businesses are denied access to Centrex II service and the variety of useful features available with sophisticated Centrex.[12] Since individual small businesses generally lack the resources to purchase and maintain costly PBXs, the sharing restrictions effectively preclude meaningful service options for small businesses in Texas, relegating them essentially to the use of Plain Old Telephone Service (POTS). The restrictions enhance SWB's monopoly power by sustaining market segmentation and price discrimination, forcing small businesses to pay more for less. For example, due to the prohibitions on Centrex sharing and use, a small business in Dallas is charged over $10.00 more per month per line for POTS service than larger businesses are required to pay for feature-rich Centrex and Plexar services.[13]

In the absence of a general rule eliminating sharing and use restrictions, BOCs are able to prolong the monopoly bottleneck with aggressive and protracted defenses of the restrictions at the state level. In Texas, for example, CENTEX Telemanagement approached SWB in 1989 regarding the initiation of Centrex-based sharing arrangements for small businesses. Exercising

[12] Southwestern Bell's Centrex II offering includes station to station calling, station hunting, call transfer attendant, restriction from outgoing calls, station restriction, reserve power, busy verification, night service, identified outward dialing, call intercept, call transfer, and consultation hold.

[13] Southwestern Bell Tariff for Dallas, Texas.

the traditional control of a monopoly "gatekeeper", SWB has taken a restrictive interpretation of its tariffs which has forestalled joint use by small businesses of its Centrex services for more than four years.[14] A final determination of the legitimacy of the Centrex tariff restrictions by the Texas Public Utility Commission[15] and the Texas Legislature[16] is still pending. Even without regard to their merits, these SWB actions -- strongly reminiscent of the Bell System's efforts to forestall interstate switched service competition in the 1970s -- impose tremendous costs on parties seeking an end to BOC restrictions that limit small business access to increased telecommunications choices and opportunities.[17]

[14] SWB maintains the restrictions are justified because SWB needs to maintain its current revenue levels to support what it alleges to be subsidized residential service. These are essentially the exact claims the FCC rejected over a decade ago in eliminating sharing and resale restrictions for interstate services. See Private Line Sharing Order, 60 FCC 2d at para. 40 ("[T]he only revenue losses of consequence in assessing the lawfulness of tariff restrictions on resale and sharing are those which ultimately burden subscribers to the carriers' services and facilities.")

[15] A five week hearing was recently concluded regarding the legitimacy of the restrictions in which every party except SWB, including CENTEX, the Staff of the Public Utility Commission, and the Texas Office of the Public Utility Advocate, aggressively opposed the restrictions. See Public Utility Commission of Texas, Docket 11109.

[16] Earlier this year, the Texas Legislature had inserted language prohibiting sharing restrictions in Sunset Legislation that failed at the last moment due to controversy on other matters.

[17] Nor are CENTEX Telemanagement's experiences in Texas isolated experiences. During the mid-1980s, SWB waged a multi-year effort, albeit an unsuccessful one, to limit the introduction of Shared Tenant Services in Texas. Moreover, just last month, on the very day that SWB filed the instant petition for interLATA authority, SWB lost a $5,710,000 judgement for anticompetitive conduct against a Texas reseller. In that action, SWB was found guilty of unlawfully discontinuing telecommunications service to a reseller, as well as unlawfully discontinuing directory service to the reseller and its customers. Metro-Link Telecom, Inc. v. Southwestern Bell Telephone Co., 56th Judicial Dist., No. 89CV0240 (July 29, 1993).

Sharing and resale restrictions are also applied outside Texas, especially in other states served by SWB, BellSouth, and US West.[18] These states include Florida, Missouri, Georgia, and Oregon, to name a few. Although not currently as contested as the Texas restrictions, these state restrictions have the same adverse effects on small business users and likewise reinforce the BOCs' local monopoly power. Thus, they should be eliminated as a precondition of interLATA authority for BOCs maintaining the restrictions.

V. The Commission Should Rule that Elimination of Tariff Restrictions on Local Services is a Precondition for BOC Entry into the InterLATA Market

The Commission's sharing and resale decisions clearly establish that the elimination of sharing and resale restrictions is an essential element of an effectively competitive interstate communications market. The same conclusion holds for the local exchange market, for the same reasons. Particularly in the absence of facilities-based alternatives for smaller businesses, the removal of sharing and resale restrictions for dominant carrier services is necessary to protect consumer choice and mitigate against monopoly price discrimination, leaving no basis for a Commission determination that the local exchange bottleneck has eroded in markets where such restrictions still exist.

The Commission must therefore incorporate state resale, sharing and use restrictions into any terms and conditions it develops in this rulemaking for BOC entry into interLATA services. Because the original policy justification for the interLATA ban was the BOCs' possession of a local exchange bottleneck, there is no basis for lifting the ban until individual users, including

[18] Although US West is not a signatory to the BOC Petition, a Commission finding that lifting the ban is in the public interest would apply to all BOCs subject to the MFJ. Thus, it may be useful for the Commission, in ruling on the BOC Petition, to keep in mind that US West applies sharing and resale restrictions in several states.

small businesses, have acceptable alternatives to BOC-provided local exchange access service. The fact that individual BOCs currently have the power to, and do, impose sharing and resale restrictions on small businesses is evidence that their bottleneck remains secure and that they retain an incentive to preserve their monopoly power through exclusionary conduct. In this proceeding, therefore, relief from the MFJ ban must be conditioned on the actual removal of barriers to effective local competition. The Commission should make elimination of state sharing and resale prohibitions and restrictions a precondition to MFJ relief for the BOCs. So long as SWB and other BOCs continue to enforce and defend sharing and resale constraints on an intrastate basis, they should be precluded from obtaining modification or elimination of the interLATA prohibition.

This in no way means the Commission must rule on the wisdom or validity of state polices. But where, as here, the FCC is asked to decide that changes in local telephone market competition have removed the public interest basis for the interLATA prohibition, it is incumbent on the Commission to assess the degree of competition that is actually permitted within individual BOC territories. Consequently, BOCs such as SWB can be permitted to retain and enforce tariff barriers to local resale and sharing, to whatever extent state regulators may legitimately permit, at the price of remaining subject to the MFJ's restrictions. Alternatively, should SWB eliminate its tariff resale and sharing restrictions, there would then appear to be a valid basis for the Commission to conclude that MFJ relief was in the public interest.[19]

[19] Conditioning the lifting of the ban on the elimination of sharing and use restrictions on local services is also necessitated to advance the Commission's commitment to facilitating small business access to advanced telecommunications services. Rewarding SWB with interLATA authority prior to the repeal of sharing and resale restrictions on local services would prolong the existence of the restrictions by removing an incentive for their elimination.

VI. Conclusion

For all the foregoing reasons, the Commission should condition BOC entry into the interLATA market on the elimination of state restrictions on the sharing and resale of local services.

Respectfully submitted,

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September 2, 1993

CERTIFICATE OF SERVICE

I, Jennifer L. Roberts, do hereby certify on this 2nd day of September, 1993, that I have served a copy of the foregoing document via first class mail, postage prepaid, to the parties below.

Jennifer L. Roberts

Jennifer L. Roberts

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